

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**OLLIE GREENE, et al.,** §  
§  
**Plaintiffs,** § **CAUSE NUMBER: 3:11-cv-0207-N**  
v. §  
§  
**TOYOTA MOTOR CORPORATION, et al.,** §  
§  
**Defendants.** §

**APPENDIX IN SUPPORT OF JOINT STATUS REPORT  
REGARDING THE SCHEDULING OF EXPERT DEPOSITIONS**

TO THE HONORABLE COURT:

COME NOW, Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.; Volvo Group North America, LLC f/k/a Volvo Trucks North America; Strick Trailers, LLC; John Fayard Moving & Warehouse, LLC; and Dolphin Line, Inc. (collectively "Defendants"), and Plaintiffs and would respectfully show the Court as follows:

| <b>EXHIBIT</b> | <b>DESCRIPTION</b>   | <b>PAGE NUMBERS</b> |
|----------------|--|---------------------|
| Exhibit 1      | Proposed agreed order to the Court   | APP 1-2             |
| Exhibit 2      | Parties Current Proposed Expert Scheduling Calendar  | APP 3-4             |
| Exhibit 3      | Correspondence from Plaintiffs' counsel dated January 8, 2014 regarding Dr. Stephenson's surgery and deposition            | APP 5-6             |
| Exhibit 4      | Toyota's Notice of Compliance with the Court's January 2, 2014 Order Regarding Attorney and Expert Deposition Availability | APP 7-9             |
| Exhibit 5      | Correspondence from Plaintiffs' counsel regarding the medical situation of Dr. Joseph Burton                               | APP 10-19           |

Respectfully submitted,

/s/ Aubrey "Nick " Pittman  
AUBREY "NICK" PITTMAN  
State Bar No. 16049750

**THE PITTMAN LAW FIRM, P.C.**  
100 Crescent Court, Suite 700  
Dallas, Texas 75201-2112  
214-459-3454  
214-853-5912 – fax  
[pittman@thepittmanlawfirm.com](mailto:pittman@thepittmanlawfirm.com)

/s/ Daryl K. Washington  
DARYL K. WASHINGTON State  
Bar No. 24013714

**LAW OFFICES OF DARYL K.  
WASHINGTON**  
325 N. St. Paul St., Suite 1975  
Dallas, Texas 75201  
214-880-4883  
469-718-0380 - fax  
[dwashington@dwashlawfirm.com](mailto:dwashington@dwashlawfirm.com)

**ATTORNEYS FOR PLAINTIFFS**

/s/ David P. Stone  
**KURT C. KERN**  
State Bar No. 11334600  
[kurt.kern@bowmanandbrooke.com](mailto:kurt.kern@bowmanandbrooke.com)  
**DAVID P. STONE**  
State Bar No. 19289060  
[david.stone@bowmanandbrooke.com](mailto:david.stone@bowmanandbrooke.com)  
**JUDE T. HICKLAND**  
State Bar No. 24065416  
[jude.hickland@bowmanandbrooke.com](mailto:jude.hickland@bowmanandbrooke.com)

**BOWMAN AND BROOKE LLP**  
2501 North Harwood Street, Suite 1700  
Dallas, Texas 75201  
(972) 616-1700  
(972) 616-1701 (fax)

**ATTORNEYS FOR DEFENDANTS  
TOYOTA MOTOR CORPORATION,  
TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH AMERICA,  
INC., AND TOYOTA MOTOR SALES,  
U.S.A., INC.**

*/s/ Pat Fitzgerald* \_\_\_\_\_

**Randy Howry**  
State Bar No. 10121690  
[rhowry@howrybreen.com](mailto:rhowry@howrybreen.com)

**Pat Fitzgerald**  
State Bar No. 24036566  
[pfitzgerald@howrybreen.com](mailto:pfitzgerald@howrybreen.com)

**John Carlson**  
State Bar No. 00790426  
[jcarlson@howrybreen.com](mailto:jcarlson@howrybreen.com)

**HOWRY BREEN & HERMAN, LLP**  
1900 Pearl Street  
Austin, Texas 78705-7300  
512-474-7300  
512-439-4106 - Direct Line  
512-474-8557 – Facsimile

**ATTORNEYS FOR DEFENDANT VOLVO  
GROUP NORTH AMERICA, LLC f/k/a  
VOLVO TRUCKS NORTH AMERICA**

*/s/ S. Todd Parks* \_\_\_\_\_

**Donald H. Dawson, Jr.**  
State Bar No. 05606500  
[ddawson@dawson-clark.com](mailto:ddawson@dawson-clark.com)  
**Kathleen A. Clark**  
State Bar No. 00788830  
[kclark@dawson-clark.com](mailto:kclark@dawson-clark.com)

**DAWSON & CLARK, P.C.**  
243 W. Congress  
600 Marquette Building  
Detroit, MI 48226  
313-256-8900  
313-256-8913 (Fax)

and

**S. Todd Parks**  
State Bar No. 15526520  
Todd.parks@wbclawfirm.com  
**Ashley De La Cerdá**  
State Bar No. 24045760  
Ashley.delacerda@wbclawfirm.com

**WALTERS, BALIDO & CRAIN, LLP**  
900 Jackson Street, Suite 600  
Dallas, Texas 75202  
214.749.4805  
214.760.1670 (fax)

**ATTORNEYS FOR DEFENDANT  
STRICK TRAILERS, LLC**

*/s/ Scott W. Self*

**Michael P. Sharp**  
State Bar No. 00788857  
msharp@feesmith.com  
**Scott W. Self**  
State Bar No. 24033176  
sself@feesmith.com

**FEE, SMITH, SHARP & VITULLO, LLP**  
Three Galleria Tower  
13155 Noel Road, Suite 1000  
Dallas, Texas 75240  
972-934-9100  
972-934-9200 (fax)

**ATTORNEYS FOR DEFENDANT JOHN  
FAYARD MOVING & WAREHOUSE, LLC**

*/s/ Joseph F. Henderson*

**John S. Kenefick**  
State Bar No. 24006294  
jkenefick@macdonalddevin.com  
**Joseph F. Henderson**  
State Bar No. 24036751  
jhenderson@macdonalddevin.com

**MACDONALD DEVIN, P.C.**

3800 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270  
214-744-3300  
214-747-0942 (fax)

**ATTORNEYS FOR DEFENDANT  
DOLPHIN LINE, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this cause in accordance with the Federal Rules of Civil Procedure on this 8th day of January, 2014.

/s/ David P. Stone

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

|  |                                      |
|--|--------------------------------------|
| <b>OLLIE GREENE, et al.,</b>             | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§ |
| <b>Plaintiffs,</b>                       | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§ |
| <b>v.</b>                                | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§ |
| <b>TOYOTA MOTOR CORPORATION, et al.,</b> | §      CAUSE NUMBER: 3:11-cv-0207-N  |
| <b>Defendants.</b>                       | §<br>§<br>§<br>§<br>§                |

**AGREED PROPOSED ORDER REGARDING  
THE SCHEDULING OF EXPERT DEPOSITIONS**

Before the Court is Plaintiffs and Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.; Volvo Group North America, LLC f/k/a Volvo Trucks North America; Strick Trailers, LLC; John Fayard Moving & Warehouse, LLC; and Dolphin Line, Inc. (collectively "the Parties") Agreed Proposed Order Regarding the Scheduling of Expert Depositions. Having considered the Parties proposal, the Court is of the opinion the proposed agreed order should be **GRANTED**.

The Court hereby Orders that the following expert depositions take place on the following dates:

|                   |                   |                       |
|-------------------|-------------------|-----------------------|
| January 15, 2014  | Keith Friedman    | Austin, Texas         |
| January 21, 2014  | Jeff Vick         | Dallas, Texas         |
| January 22, 2014  | Stan Smith        | Chicago, Illinois     |
| January 22, 2014  | Trudi Zaplac      | Houston, Texas        |
| January 23, 2014  | Lee Carr          | Houston, Texas        |
| January 29, 2014  | Helen Reynolds    | Dallas, Texas         |
| January 31, 2014  | Tom Truss         | Dallas, Texas         |
| February 4, 2014  | Darrell Henderson | Lafayette, Louisiana  |
| February 5, 2014  | Kenneth Tandy     | Houston, Texas        |
| February 7, 2014  | Will Van Arsdell  | Natick, Massachusetts |
| February 10, 2014 | Smokey Dyer       | Kansas City, Missouri |
| February 12, 2014 | Mickey Marine     | Phoenix, Arizona      |
| February 12, 2014 | Stephen Werner    | Phoenix, Arizona      |

|                   |                 |                           |
|-------------------|-----------------|---------------------------|
| February 14, 2014 | Timothy Cheek   | Charlotte, North Carolina |
| February 17, 2014 | Robert Lange    | Detroit, Michigan         |
| February 18, 2014 | Michelle Volger | Detroit, Michigan         |
| February 20, 2014 | Dolph Lohwasser | Detroit, Michigan         |

**SO ORDERED** on this \_\_\_\_ day of \_\_\_\_\_, 2014.

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IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE

| ~ January 2014 ~ |     |   |   |  |   |        |
|------------------|-----|---|---|--|---|--------|
| Sun              | Mon | Tue   | Wed   | Thu  | Fri   | Sat    |
|                  |     |   | 1   | 2  | 3   | 4      |
| 5                | 6   | 7   | 8   | 9  | 10  | 11     |
| 12               | 13  | 14  | 15<br>Plfs: Keith Friedman<br>(Austin)  | 16   | 17<br>Plfs: Keith Friedman<br>(Austin; contingent upon<br>Court's ruling and<br>Friedman's continued<br>availability) | 18     |
| 19               | 20  | 21<br>Plfs: Jeff Vick (Dallas)                  | 22<br>Plfs: Stan Smith (Chicago)<br>Plfs: Trudi Zaplac<br>(Houston)   | 23<br>Toyota: Lee Carr (Houston)   | 24  | 25     |
| 26               | 27  | 28<br>Plfs: Rhoads Stephenson<br>(Austin or LA) | 29<br>Plfs: Rhoads Stephenson<br>(Austin or LA; contingent<br>upon Court's ruling and<br>Stephenson's continued<br>availability)<br>Helen Reynolds (Dallas) | 30<br>Plfs: Joseph Burton<br>(Alpharetta, GA; contingent<br>upon health) | 31<br>Dolphin: Tom Truss<br>(Dallas)  | Notes: |

| <b>~ February 2014 ~</b> |   |  |  |   |   |               |
|--------------------------|---|--|--|---|---|---------------|
| Sun                      | Mon   | Tue  | Wed  | Thu   | Fri   | Sat           |
|                          |   |  |  |   |   | <b>1</b>      |
| <b>2</b>                 | <b>3</b>  | <b>4</b><br>Plfs: Darrell Henderson<br>(Lafayette, LA) | <b>5</b><br>Volvo: Kenneth Tandy<br>(Houston)  | <b>6</b><br>Toyota: Catherine Corrigan (Philadelphia;<br>subject to Joseph Burton<br>being presented on<br>1/30/14) | <b>7</b><br>Toyota: Will Van Arsdell<br>(Natick, Massachusetts) | <b>8</b>      |
| <b>9</b>                 | <b>10</b><br>Toyota: Smokey Dyer<br>(Kansas City, KS) | <b>11</b>  | <b>12</b><br>Toyota: Mickey Marine<br>(Phoenix)<br>Volvo: Stephen Werner<br>(Phoenix)                    | <b>13</b>   | <b>14</b><br>Volvo: Timothy Cheek<br>(Charlotte)                | <b>15</b>     |
| <b>16</b>                | <b>17</b><br>Toyota: Robert Lange<br>(Detroit)        | <b>18</b><br>Strick: Michelle Vogler<br>(Detroit)      | <b>19</b><br>Strick: David Viano<br>(Detroit; subject to Joseph Burton<br>being presented on<br>1/30/14) | <b>20</b><br>Toyota: Dolph Lohwasser<br>(Detroit)   | <b>21</b>   | <b>22</b>     |
| <b>23</b>                | <b>24</b>   | <b>25</b>  | <b>26</b>  | <b>27</b>   | <b>28</b>   | <b>Notes:</b> |

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**From:** Aubrey "Nick" Pittman <pittman@thepittmanlawfirm.com>  
**Sent:** Wednesday, January 08, 2014 11:51 AM  
**To:** Brian E. Mason; Joseph F. Henderson; 'Daryl Washington'; Kurt C. Kern  
**Cc:** David Stone; Jude T. Hickland; Pat Fitzgerald; John Carlson; Randy Howry; Don Dawson; Kathleen Clark; todd.parks@wbclawfirm.com; Ashley.delaCerda@wbclawfirm.com; Scott W. Self; John S. Kenefick; Aubrey "Nick" Pittman  
**Subject:** Re: January 7th Meet and Confer - Dates for Dr. R. Stephenson

Counsel:

Just a reminder that during our conference yesterday Plaintiffs informed Defendants that Dr. Stephenson is having surgery during the week of January 20. Therefore, depending on the success of the surgery and extent of recovery needed, there is no guarantee that Dr. Stephenson can be produced on January 28 or 29. That is why Plaintiffs offered January 16 and January 17 for Dr. Stephenson's deposition. We ask that you consider strongly taking Dr. Stephenson's deposition on January 16 or 17 "before" he goes through surgery. In addition, although you are aware that Plaintiffs oppose any request to subject Dr. Stephenson to more than 7 hours of deposition time, if the Court were to grant Defendants' request for more time with Dr. Stephenson, his deposition could be reconvened on Saturday, January 18.

**From:** [Brian E. Mason](#)  
**Sent:** Tuesday, January 07, 2014 5:09 PM  
**To:** [Joseph F. Henderson](#) ; ['Daryl Washington'](#) ; [Kurt C. Kern](#)  
**Cc:** [Aubrey Nick Pittman](#) ; [David Stone](#) ; [Jude T. Hickland](#) ; [Pat Fitzgerald](#) ; [John Carlson](#) ; [Randy Howry](#) ; [Don Dawson](#) ; [Kathleen Clark](#) ; [todd.parks@wbclawfirm.com](#) ; [Ashley.delaCerda@wbclawfirm.com](#) ; [Scott W. Self](#) ; [John S. Kenefick](#)  
**Subject:** RE: January 7th Meet and Confer - Dates for Reynolds and Truss

Counsel,

As a follow up to Joe's email, it is our understanding that Stephenson would be produced on January 28<sup>th</sup>, and possibly the 29<sup>th</sup> as a follow up date contingent upon the Court's ruling on our Joint Submission and Stephenson's continued availability. With that said, we believe that producing Helen Reynolds on the 29<sup>th</sup> in Dallas would be workable, to the extent the parties want to double-track with Ms. Reynolds in Dallas and Stephenson in Austin or LA (if the Court grants additional time for Stephenson). In addition, we have no issue with Tom Truss being produced in Dallas on January 31<sup>st</sup>. This would allow Will Van Arsdell to be produced on February 7<sup>th</sup> in Boston, one day after Catherine Corrigan is produced in Philadelphia on February 6<sup>th</sup>.

I have attached a tentative calendar with all of the proposed expert dates discussed at today's conference. Please advise if the proposed schedule is agreeable to each party, with the understanding that certain dates are subject to change given the Court's ruling on our Joint Submission, and Burton's health situation.

Thanks,

Brian E. Mason  
Direct: 972.616.1705

---

**From:** Joseph F. Henderson [mailto:[JHenderson@macdonalddevin.com](mailto:JHenderson@macdonalddevin.com)]  
**Sent:** Tuesday, January 07, 2014 3:44 PM  
**To:** 'Daryl Washington'; Kurt C. Kern  
**Cc:** Aubrey Nick Pittman; David Stone; Jude T. Hickland; Brian E. Mason; Pat Fitzgerald; John Carlson; Randy Howry; Don Dawson; Kathleen Clark; [todd.parks@wbclawfirm.com](mailto:todd.parks@wbclawfirm.com); [Ashley.delaCerda@wbclawfirm.com](mailto:Ashley.delaCerda@wbclawfirm.com); Scott W. Self; John S. Kenefick  
**Subject:** January 7th Meet and Confer - Dates for Reynolds and Truss

Everyone,

I am writing to follow up on today's meeting. We heard back from Tom Truss and Helen Reynolds. Both have availability during the last week of January. Specifically, Helen is available on 01/29/2014 and Tom is available 01/29/2014; 01/30/2014; and 01/31/2014.

From my notes, I believe that we have Friedman down for the 28th and Burton tentatively set for the 30th - to the extent that effects scheduling.

Helen has further availability on 02/26 and 02/28.

Please let me know if you have any questions.

Sincerely,

Joe  
**Joseph F. Henderson**  
MACDONALD DEVIN, P.C.  
3800 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270  
214.744.3300  
Direct: 214.651.3324  
Fax: 214.747.0942  
Email: [blocked::mailto:JHenderson@macdonalddevin.com](mailto:JHenderson@macdonalddevin.com)  
[www.macdonalddevin.com](http://www.macdonalddevin.com)

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

OLLIE GREENE, *et al.*,

§

Plaintiffs,

§

v.

§

TOYOTA MOTOR CORPORATION, *et al.*,

§

CAUSE NUMBER: 3:11-cv-0207-N

§

Defendants.

§

§

**THE TOYOTA DEFENDANTS' NOTICE OF COMPLIANCE WITH THE COURT'S JANUARY  
2, 2014 ORDER REGARDING ATTORNEY AND EXPERT DEPOSITION AVAILABILITY**

TO THE HONORABLE COURT:

Defendants Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., and Toyota Motor Engineering & Manufacturing North America, Inc., Defendants in the above-styled and numbered action, file this Notice of Compliance with the Court's January 2, 2014 Order Regarding Attorney and Expert Deposition Availability, and respectfully submit to the Court Exhibit A, attached herein.

Respectfully submitted,

*/s/ Kurt C. Kern*

**KURT C. KERN**

State Bar No. 11334600

[kurt.kern@bowmanandbrooke.com](mailto:kurt.kern@bowmanandbrooke.com)

**DAVID P. STONE**

State Bar No. 19289060

[david.stone@bowmanandbrooke.com](mailto:david.stone@bowmanandbrooke.com)

**JUDE T. HICKLAND**

State Bar No. 24065416

[jude.hickland@bowmanandbrooke.com](mailto:jude.hickland@bowmanandbrooke.com)

**BOWMAN AND BROOKE LLP**

2501 N. Harwood Street, Suite 1700

Dallas, Texas 75201

(972) 616-1700

(972) 616-1701 (fax)

**ATTORNEYS FOR DEFENDANTS  
TOYOTA MOTOR CORPORATION,  
TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH AMERICA,  
INC., AND TOYOTA MOTOR SALES,  
U.S.A., INC.**

**Exhibit A**

| <b>Expert/Attorney</b> | <b>Dates of Availability</b>                               | <b>Issue or Subject Matter</b>   | <b>Location</b>   |
|------------------------|--|--|---|
| Catherine Corrigan     | Feb. 4, 5, 6, 26, 27, 28                                   | Occupant movement, kinematics, injury mechanisms and injury exposure   | Philadelphia, PA<br>(Summit Ct. Rpt. 1500 Walnut St., Suite 1600, Phil. PA, 19102; 215-985-2400)  |
| Smokey Dyer            | Feb. 10, 11, 12  | Cause and nature of fire that occurred   | Kansas City, KS<br>(Marriott at KCI Airport or KCI Expo Center)                                   |
| Lee Carr               | Jan. 22, 23, 24<br>Feb. 25, 26, 27                         | Vehicle design, performance and accident reconstruction  | Jan. 22-24 (Houston, TX at Carr Eng.)<br>Feb. 25-27 (Torrance, CA at B&B office)                  |
| Robert Lange           | Feb. 15, 16, 17  | Design, testing and performance of vehicle's structure, occupant protections systems, fuel system and design characteristics | Detroit, MI<br>(Westin Airport)   |
| Dolph Lohwasser        | Feb. 12, 13, 14, 18  | Design, testing and performance of vehicle's structure, occupant protections systems, fuel system and design characteristics | Detroit, MI<br>(Westin Airport)   |
| Will Van Arsdell       | Feb. 6, 7, 8   | Design and performance of vehicle's occupant restraint systems and design characteristics                                    | Natick, MA<br>(Courtyard Boston Natick<br>342 Speen Street<br>Natick, MA 01760<br>1-508-655-6100) |
| Micky Marine           | Feb. 11, 12 13   | Coordination of crash test with exemplar Toyota and Volvo  | Phoenix, AZ   |
| Kurt Kern              | Jan. 6, 10, 14, 15, 21-24, 27-31<br>Feb. 3-5, 10-14 and 17 |  |   |
| David Stone            | Jan. 17, 21-24, 27-31<br>Feb. 3-7, 10-14, and 17           |  |   |

---

**From:** Aubrey "Nick" Pittman <pittman@thepittmanlawfirm.com>  
**Sent:** Friday, January 03, 2014 2:43 PM  
**To:** David Stone; Kurt C. Kern; Daryl Washington  
**Cc:** Jude T. Hickland; Brian E. Mason; Kim Weiner; jcarlson@howrybreen.com; Pat Fitzgerald; rhowry@howrybreen.com; todd.parks@wbclawfirm.com; Don Dawson; kathleen@dawson-clark.com; jkenefick@macdonalddevin.com; JHenderson@macdonalddevin.com; sself@feesmith.com; Aubrey "Nick" Pittman  
**Subject:** Re: Vehicle Inspections

David, in short, yes Daryl and I are available to confer. Should we call you or will you be calling my office?

However, I wish first to respond to a few of the points raised in your email. One, as explained in our motion for a new deadline, Plaintiffs did not request relief earlier because (a) our potential experts were unavailable over the Christmas holidays to review Defendants' expert reports to tell us what they needed; and (b) Plaintiffs' counsel were consumed with work on other filings in this case. Two, the reason for Plaintiffs' request for another inspection of the exemplar 4Runner and Volvo tractor is two-fold: (a) Defendants' experts make certain observations of those vehicles that now necessitate reexamination of the vehicles; and (b) two or three of Plaintiffs' potential experts have not yet inspected those vehicles.

Three, although you are correct that Toyota offered to allow Plaintiffs to inspect the vehicles on today, as you may recall, at the time of your offer the parties had already arranged to conduct the deposition of Jeff Vick on January 3. Accordingly, Plaintiffs' counsel and Mr. Vick would not have been available to inspect the vehicles on January 3. In addition, even if Plaintiffs other potential experts had inspected the crash and/or exemplar vehicles today, they still would not have been able to have a report prepared tomorrow.

Four, the reasons we requested the January 20 date are several. One, many of our potential experts are unavailable over the next week. One of them is on a cruise ship in Australia until January 13. Another is out of the country until next Friday. Another is in trial next week, and Dr. Burton, who was recently in a motor vehicle accident, is in recovery for at least a week. Therefore, they will all need additional time to review Defendants' expert reports before we can determine if they will have rebuttal testimony to provide.

Plaintiffs are prepared to work within the parameters of the Court's new expert disclosure deadlines to ensure that this extension does not interfere with those dates.

**From:** [David Stone](#)  
**Sent:** Friday, January 03, 2014 1:39 PM  
**To:** [pittman@thepittmanlawfirm.com](mailto:pittman@thepittmanlawfirm.com) ; [Kurt.C.Kern](mailto:Kurt.C.Kern) ; [Daryl.Washington](mailto:Daryl.Washington)  
**Cc:** [Jude.T.Hickland](mailto:Jude.T.Hickland) ; [Brian.E.Mason](mailto:Brian.E.Mason) ; [Kim.Weiner](mailto:Kim.Weiner) ; [jcarlson@howrybreen.com](mailto:jcarlson@howrybreen.com) ; [Pat.Fitzgerald](mailto:Pat.Fitzgerald) ; [rhowry@howrybreen.com](mailto:rhowry@howrybreen.com) ; [todd.parks@wbclawfirm.com](mailto:todd.parks@wbclawfirm.com) ; [Don.Dawson](mailto:Don.Dawson) ; [kathleen@dawson-clark.com](mailto:kathleen@dawson-clark.com) ; [jkenefick@macdonalddevin.com](mailto:jkenefick@macdonalddevin.com) ; [JHenderson@macdonalddevin.com](mailto:JHenderson@macdonalddevin.com) ; [sself@feesmith.com](mailto:sself@feesmith.com)  
**Subject:** RE: Vehicle Inspections

Nick, even though we provided full disclosure of our expert reports and supporting materials, including thorough documentation of the crash test with our expert disclosures on December 20, you did not make any request to inspect the crash tested 4Runner and Volvo until December 31, to which we responded on the same day. Further, I was puzzled by your urgent and untimely request to inspect the exemplar 4Runner and subject Volvo tractor since you have known for nearly two years that those vehicles were at Carr Engineering in Houston and available for inspection there.

Nevertheless, your experts certainly could have inspected either the crash tested 4Runner and Volvo in Phoenix, or the vehicles in Houston, today, as we had offered. You chose not respond to our offer. However, with reasonable notice, we can make these vehicles available for inspection next week, with the exception of Tuesday and Thursday. If you still want to inspect those vehicles, please let me know immediately when, by whom and how long you want to inspect these vehicles.

As for your request to extend the rebuttal report deadline, we do not believe an extension to January 20 will work with the other deadlines set by Judge Ramirez after yesterday's hearing. While I cannot speak for the other defendants, we might consider a request for a shorter extension of that deadline, in exchange for some other discovery accommodations from plaintiffs. If you want to have a meaningful conference on that issue, please feel free to call Kurt or me.

David P. Stone  
Partner  
Bowman and Brooke LLP  
2501 North Harwood  
Suite 1700  
Dallas, TX 75201  
Main: (972) 616-1700  
Direct: (972) 616-1733  
Fax: (972) 616-1701  
Email: [David.Stone@BowmanandBrooke.com](mailto:David.Stone@BowmanandBrooke.com)  
[www.bowmanandbrooke.com](http://www.bowmanandbrooke.com)

---

**From:** Aubrey Nick Pittman [mailto:[pittman@thepittmanlawfirm.com](mailto:pittman@thepittmanlawfirm.com)]  
**Sent:** Thursday, January 02, 2014 7:07 PM  
**To:** David Stone; Kurt C. Kern; Daryl Washington; Aubrey Nick Pittman  
**Cc:** Jude T. Hickland; Brian E. Mason; Kim Weiner  
**Subject:** Re: Vehicle Inspections

David:

Does this mean Toyota is unwilling to agree to an extension of the expert rebuttal date?

Also, as you know our experts would not be able to be in both places tomorrow so I'm not sure how that was supposed to work.

---

**From:** David Stone <[David.Stone@bowmanandbrooke.com](mailto:David.Stone@bowmanandbrooke.com)>  
**Date:** Thu, 2 Jan 2014 21:27:44 +0000  
**To:** Kurt C. Kern<[Kurt.Kern@bowmanandbrooke.com](mailto:Kurt.Kern@bowmanandbrooke.com)>; Aubrey \"Nick\" Pittman  
(<mailto:pittman@thepittmanlawfirm.com>)%3cpittman@thepittmanlawfirm.com>;  
<mailto:dwashlawfirm.com%3cdwashington@dwashlawfirm.com>>  
**Cc:** Jude T. Hickland<[Jude.Hickland@bowmanandbrooke.com](mailto:Jude.Hickland@bowmanandbrooke.com)>; Brian E.  
Mason<[Brian.Mason@bowmanandbrooke.com](mailto:Brian.Mason@bowmanandbrooke.com)>; Kim Weiner<[Kim.Weiner@bowmanandbrooke.com](mailto:Kim.Weiner@bowmanandbrooke.com)>  
**Subject:** RE: Vehicle Inspections

Nick, we have still not heard from you about whether you want to inspect the Volvo and 4Runner used in the crash test in Phoenix and/or the subject Volvo tractor and exemplar 4Runner in Houston tomorrow, January 3. If you want to inspect at either or both of these location tomorrow, I need to know by 4 pm today. Otherwise, I will have to release that date.

David P. Stone  
Partner  
Bowman and Brooke LLP  
2501 North Harwood  
Suite 1700  
Dallas, TX 75201  
Main: (972) 616-1700  
Direct: (972) 616-1733  
Fax: (972) 616-1701  
Email: [David.Stone@BowmanandBrooke.com](mailto:David.Stone@BowmanandBrooke.com)  
[www.bowmanandbrooke.com](http://www.bowmanandbrooke.com)

---

**From:** Kurt C. Kern  
**Sent:** Tuesday, December 31, 2013 6:23 PM  
**To:** Aubrey "Nick" Pittman ([pittman@thepittmanlawfirm.com](mailto:pittman@thepittmanlawfirm.com)); [dwashington@dwashlawfirm.com](mailto:dwashington@dwashlawfirm.com)  
**Cc:** David Stone; Jude T. Hickland; Brian E. Mason; Kim Weiner  
**Subject:** Vehicle Inspections

Nick:

I'm not sure if it got communicated to you, but further to my e-mail of very early this morning, we've confirmed that the crash test vehicles in Phoenix and the exemplar vehicles in Houston are available for inspection on Friday, January 3<sup>rd</sup>. Please let me know if you and/or your experts want to inspect the various vehicles that day and I will supply you with the logistics regarding such inspections. Happy New Year.

Kurt

Kurt Christopher Kern  
Bowman and Brooke LLP  
2501 North Harwood Street, Suite 1700  
Dallas, Texas 75201  
Direct: 972.616.1711  
Fax: 972.616.1701  
[KKern@BowmanandBrooke.com](mailto:KKern@BowmanandBrooke.com)

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**From:** Aubrey "Nick" Pittman <pittman@thepittmanlawfirm.com>  
**Sent:** Friday, January 03, 2014 3:19 PM  
**To:** Kurt C. Kern; David Stone; Daryl Washington  
**Cc:** Jude T. Hickland; Brian E. Mason; Kim Weiner; jcarlson@howrybreen.com; Pat Fitzgerald; rhowry@howrybreen.com; todd.parks@wbclawfirm.com; Don Dawson; kathleen@dawson-clark.com; jkenefick@macdonalddevin.com; JHenderson@macdonalddevin.com; sself@feesmith.com; Aubrey "Nick" Pittman  
**Subject:** Re: Vehicle Inspections

Hopefully, by now you have received my response to Mr. Stone's email, which was sent before I received your email. As I explained to Mr. Stone, January 20 was requested because of expert unavailability. The January 10 date you propose would not provide enough time.

As far as the dates for Burton, I will run those dates by his office to see whether the dates will work. However, he was recently involved in a motor vehicle accident and we will not know of his availability until next week.

As to Friedman and Stephenson, I will see whether they are available on the dates in your email. However, we cannot in good conscience agree to provide 32 hours of deposition time on just one expert report that was split into four parts solely for Defendants' convenience. With that being said, let us know if you will want us to reserve one of those days for a 7-9 hour single day deposition of Friedman and Stephenson.

As to Jeff Vick, I will check on this schedule when he returns my call.

**From:** [Kurt C. Kern](#)  
**Sent:** Friday, January 03, 2014 2:29 PM  
**To:** [David Stone](#) ; [pittman@thepittmanlawfirm.com](mailto:pittman@thepittmanlawfirm.com) ; [Daryl Washington](#)  
**Cc:** [Jude T. Hickland](#) ; [Brian E. Mason](#) ; [Kim Weiner](#) ; [jcarlson@howrybreen.com](mailto:jcarlson@howrybreen.com) ; [Pat Fitzgerald](#) ; [rhowry@howrybreen.com](mailto:rhowry@howrybreen.com) ; [todd.parks@wbclawfirm.com](mailto:todd.parks@wbclawfirm.com) ; [Don Dawson](#) ; [kathleen@dawson-clark.com](mailto:kathleen@dawson-clark.com) ; [jkenefick@macdonalddevin.com](mailto:jkenefick@macdonalddevin.com) ; [JHenderson@macdonalddevin.com](mailto:JHenderson@macdonalddevin.com) ; [sself@feesmith.com](mailto:sself@feesmith.com)  
**Subject:** RE: Vehicle Inspections

Nick:

Further to David's e-mail and having given it considerable thought the Toyota Defendants (even though we think your request for an extension of time for Plaintiffs to submit rebuttal reports is very late/untimely for the reasons stated in the Court's Order earlier today and in David's e-mail) would propose that in exchange for agreeing that Plaintiffs can have up to 5 PM on Friday, January 10<sup>th</sup> to submit all rebuttal reports, Plaintiffs agree as follows:

1. Plaintiffs will present Dr. Burton for deposition on January 14<sup>th</sup> or 15<sup>th</sup> at his office in Alpharetta, Georgia;
2. Plaintiffs will present Keith Freidman for two consecutive days of deposition, not to exceed more than 8 hours each day on January 21<sup>st</sup> and 22<sup>nd</sup> in Austin;
3. Plaintiffs will present Rhoades Stephenson for two consecutive days of deposition, not to exceed more than 8 hours each day on January 23<sup>rd</sup> and 24<sup>th</sup>;

4. Plaintiffs will present Jeff Vick for deposition on either January 27<sup>th</sup> or 28<sup>th</sup>; and

5. If necessary Plaintiffs will agree to allow biomechanical defense expert Dr. Catherine Corrigan to be presented for deposition up to and including March 3<sup>rd</sup>.

As always if you wish to confer regarding this matter please call me.

Kurt

Kurt Christopher Kern  
Bowman and Brooke LLP  
2501 North Harwood Street, Suite 1700  
Dallas, Texas 75201  
Direct: 972.616.1711  
Fax: 972.616.1701  
[KKern@BowmanandBrooke.com](mailto:KKern@BowmanandBrooke.com)

---

**From:** David Stone  
**Sent:** Friday, January 03, 2014 1:39 PM  
**To:** pittman@thepittmanlawfirm.com; Kurt C. Kern; Daryl Washington  
**Cc:** Jude T. Hickland; Brian E. Mason; Kim Weiner; John Carlson (jcarlson@howrybreen.com); Pat Fitzgerald; 'rhowry@howrybreen.com' (rhowry@howrybreen.com); todd.parks@wbclawfirm.com; Don Dawson; kathleen@dawson-clark.com; jkenefick@macdonalddevin.com; Joseph F. Henderson (JHenderson@macdonalddevin.com); 'Scott W. Self' (sself@feesmith.com)  
**Subject:** RE: Vehicle Inspections

Nick, even though we provided full disclosure of our expert reports and supporting materials, including thorough documentation of the crash test with our expert disclosures on December 20, you did not make any request to inspect the crash tested 4Runner and Volvo until December 31, to which we responded on the same day. Further, I was puzzled by your urgent and untimely request to inspect the exemplar 4Runner and subject Volvo tractor since you have known for nearly two years that those vehicles were at Carr Engineering in Houston and available for inspection there.

Nevertheless, your experts certainly could have inspected either the crash tested 4Runner and Volvo in Phoenix, or the vehicles in Houston, today, as we had offered. You chose not respond to our offer. However, with reasonable notice, we can make these vehicles available for inspection next week, with the exception of Tuesday and Thursday. If you still want to inspect those vehicles, please let me know immediately when, by whom and how long you want to inspect these vehicles.

As for your request to extend the rebuttal report deadline, we do not believe an extension to January 20 will work with the other deadlines set by Judge Ramirez after yesterday's hearing. While I cannot speak for the other defendants, we might consider a request for a shorter extension of that deadline, in exchange for some other discovery accommodations from plaintiffs. If you want to have a meaningful conference on that issue, please feel free to call Kurt or me.

David P. Stone  
Partner  
Bowman and Brooke LLP  
2501 North Harwood  
Suite 1700  
Dallas, TX 75201  
Main: (972) 616-1700  
Direct: (972) 616-1733

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Email: [David.Stone@BowmanandBrooke.com](mailto:David.Stone@BowmanandBrooke.com)  
[www.bowmanandbrooke.com](http://www.bowmanandbrooke.com)

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**From:** Aubrey Nick Pittman [<mailto:pittman@thepittmanlawfirm.com>]  
**Sent:** Thursday, January 02, 2014 7:07 PM  
**To:** David Stone; Kurt C. Kern; Daryl Washington; Aubrey Nick Pittman  
**Cc:** Jude T. Hickland; Brian E. Mason; Kim Weiner  
**Subject:** Re: Vehicle Inspections

David:

Does this mean Toyota is unwilling to agree to an extension of the expert rebuttal date?

Also, as you know our experts would not be able to be in both places tomorrow so I'm not sure how that was supposed to work.

---

**From:** David Stone <[David.Stone@bowmanandbrooke.com](mailto:David.Stone@bowmanandbrooke.com)>  
**Date:** Thu, 2 Jan 2014 21:27:44 +0000  
**To:** Kurt C. Kern<[Kurt.Kern@bowmanandbrooke.com](mailto:Kurt.Kern@bowmanandbrooke.com)>; Aubrey \"Nick\" Pittman (<mailto:pittman@thepittmanlawfirm.com>)%3cpittman@thepittmanlawfirm.com>; <mailto:dwashington@dwashlawfirm.com>%3cdwashington@dwashlawfirm.com>  
**Cc:** Jude T. Hickland<[Jude.Hickland@bowmanandbrooke.com](mailto:Jude.Hickland@bowmanandbrooke.com)>; Brian E. Mason<[Brian.Mason@bowmanandbrooke.com](mailto:Brian.Mason@bowmanandbrooke.com)>; Kim Weiner<[Kim.Weiner@bowmanandbrooke.com](mailto:Kim.Weiner@bowmanandbrooke.com)>  
**Subject:** RE: Vehicle Inspections

Nick, we have still not heard from you about whether you want to inspect the Volvo and 4Runner used in the crash test in Phoenix and/or the subject Volvo tractor and exemplar 4Runner in Houston tomorrow, January 3. If you want to inspect at either or both of these location tomorrow, I need to know by 4 pm today. Otherwise, I will have to release that date.

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**To:** Aubrey "Nick" Pittman ([pittman@thepittmanlawfirm.com](mailto:pittman@thepittmanlawfirm.com)); [dwashington@dwashlawfirm.com](mailto:dwashington@dwashlawfirm.com)  
**Cc:** David Stone; Jude T. Hickland; Brian E. Mason; Kim Weiner  
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Kurt

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Fax: 972.616.1701  
[KKern@BowmanandBrooke.com](mailto:KKern@BowmanandBrooke.com)

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**From:** Aubrey "Nick" Pittman <pittman@thepittmanlawfirm.com>  
**Sent:** Tuesday, January 07, 2014 1:55 AM  
**To:** Kurt C. Kern; ramirez\_orders@txnd.uscourts.gov  
**Cc:** rhowry@howrybreen.com; pfitzgerald@howrybreen.com; ddawson@dawson-clark.com; todd.parks@wbclawfirm.com; sself@feesmith.com; jkenefick@macdonalddevin.com; David Stone; Jude T. Hickland; Kim Weiner; 'Daryl Washington'; 'Ashley de la Cerda'; 'Kathleen Clark'; Brian E. Mason; Aubrey "Nick" Pittman  
**Subject:** RE: 11cv207-N; Greene et al v. Toyota, et al; Plaintiffs' schedule of availability for expert depositions

Mr. Kern:

Due to us inadvertently looking at the date of a wrong Order (a January 3 Order instead of the January 2 Order), Plaintiffs offered dates for Friedman within 14 days of that January 3, 2013, Order. So, we'll definitely correct that. As you may recall, Friedman was originally available for a deposition on January 7, 2014. However, once the parties accepted your suggestion to hold a meet-and-confer on January 7, 2014, that date became unavailable. Nevertheless, although we can discuss scheduling in more detail during our conference, Friedman has other matters scheduled that he has agreed to work around the date Defendants select for his deposition. Therefore, Friedman can make himself available on January 14 **or** 15 **or** 16 **or** 17. Once Defendants choose the day you want, Mr. Friedman can arrange his other matters for the 3 dates you do not choose.

As far as Dr. Burton's unavailability as a result of him being in ICU, I'm sure you will agree that this unfortunate occurrence was beyond any of our control. His secretary informed us that she has no clue as to his recovery schedule, if any. Plaintiffs would hope, however, that Defendants will not allow Dr. Burton's serious hospitalization to delay any of the other depositions. If I recall correctly, there are only two defendants' experts who provide testimony rebutting Dr. Burton's report. Therefore, Plaintiffs believe the parties should proceed with the depositions of the other 17 experts without regard to Dr. Burton's illness. Of course, we can certainly delay the depositions of the 2 experts who rebut Dr. Burton's opinions until after he recovers. If for some reason, God forbid, Dr. Burton does not recover before February 17, 2014, we would certainly suggest a joint motion to the Court for more time for these three remaining experts.

In any event, we can discuss all of these issues in person during our meet-and-confer. Thanks.

---

**From:** Kurt C. Kern [mailto:[Kurt.Kern@bowmanandbrooke.com](mailto:Kurt.Kern@bowmanandbrooke.com)]  
**Sent:** Monday, January 06, 2014 6:00 PM  
**To:** Aubrey "Nick" Pittman; ramirez\_orders@txnd.uscourts.gov  
**Cc:** rhowry@howrybreen.com; pfitzgerald@howrybreen.com; ddawson@dawson-clark.com;

todd.parks@wbclawfirm.com; ssself@feesmith.com; jkenefick@macdonalddevin.com; David Stone; Jude T. Hickland; Kim Weiner; 'Daryl Washington'; 'Ashley de la Cerdá'; 'Kathleen Clark'; Brian E. Mason

**Subject:** RE: 11cv207-N; Greene et al v. Toyota, et al; Plaintiffs' schedule of availability for expert depositions

Counsel:

I've reviewed the Plaintiffs' Schedule of Availability. I'm sure you already know, so I won't discuss in any detail the fact that your Schedule does not comply with the Court's Orders of January 2<sup>nd</sup> (and I'm not referring to Dr. Burton's car accident related unavailability). In an effort to have some meaningful discussions tomorrow morning would you please check in advance of our meeting and advise counsel at the outset of tomorrow's conference if Keith Friedman is available on January 13<sup>th</sup> or 14<sup>th</sup> (in addition to the one date you did supply within 14 days of the Court's Orders, January 15<sup>th</sup>)? It might also be helpful to know if Mr. Friedman would be available on January 21<sup>st</sup> or 23<sup>rd</sup> (I note he is already available on January 22<sup>nd</sup>, but if the Court grants the Defendants' request for 2 days for Mr. Friedman's deposition we would need a date on either side of the single dates you've proposed for Mr. Friedman). As for Dr. Burton, his health issues are certainly of paramount concern, but I'm sure you're aware that per the Court's Orders his deposition, along with Mr. Friedman's, is to be taken before any of the other experts. As you note, hopefully Dr. Burton recovers well and would be available to give his deposition by the end of the month. Even so, that will push all other depositions into February. I'm sure we'll have some thoughtful discussion tomorrow on how to get all this expert discovery completed in as timely a manner as possible. See you in the morning.

Kurt

---

**From:** Aubrey "Nick" Pittman [<mailto:pittman@thepittmanlawfirm.com>]

**Sent:** Monday, January 06, 2014 4:49 PM

**To:** [ramirez\\_orders@txnd.uscourts.gov](mailto:ramirez_orders@txnd.uscourts.gov)

**Cc:** [rhowry@howrybreen.com](mailto:rhowry@howrybreen.com); [pfitzgerald@howrybreen.com](mailto:pfitzgerald@howrybreen.com); [ddawson@dawson-clark.com](mailto:ddawson@dawson-clark.com); [todd.parks@wbclawfirm.com](mailto:todd.parks@wbclawfirm.com); [ssself@feesmith.com](mailto:ssself@feesmith.com); [jkenefick@macdonalddevin.com](mailto:jkenefick@macdonalddevin.com); David Stone; Jude T. Hickland; Kim Weiner; Kurt C. Kern; 'Daryl Washington'; 'Ashley de la Cerdá'; 'Kathleen Clark'

**Subject:** RE: 11cv207-N; Greene et al v. Toyota, et al; Plaintiffs' schedule of availability for expert depositions

Pursuant to the Court's January 2, 2014, Order, please find attached Plaintiffs' calendar submission of the availability of Plaintiffs' counsel and experts for the depositions of experts.

Regards,

Aubrey "Nick" Pittman,  
**THE PITTMAN LAW FIRM, P.C.**  
100 Crescent Court  
Suite 700  
Dallas, Texas 75201  
(214) 459-3454  
(214) 853-5912 (fax)  
[pittman@thepittmanlawfirm.com](mailto:pittman@thepittmanlawfirm.com)

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